able or out of joint with popular conceptions, and therefore it should have been supported by the court. The court, however, did not reach its result by this reasoning. Its thought would seem to be that it was the province of the court to define the term "income" according to what it believed to be the popular conception of the term at the time of the adoption of the Sixteenth Amendment. In *Hays* v. *Gauley Mountain Coal Company*,[2] the court had, in dealing with the Corporation Excise Tax Act of 1909, construed the term "income" to include capital increment realized by a sale. In that case the only question presented was as to the legislative intent; in the principal case the question presented was as to legislative competence, but the court saw no reason for adopting a different construction of the term. It therefore declined to follow the *dicta* in *Gray* v. *Darlington*,[3] and *Lynch* v. *Turrish*,[4] and adopted the definition presented in a *dictum* in *Eisner* v. *Macomber*,[5] to wit: "Income may be defined as a gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through sale or conversion of capital assets." It is to be noted that this definition does not include any capital increment except such as is realized by a sale or conversion.

In *Goodrich* v. *Edwards*,[6] decided at the same time, the court held that if property acquired before March 1, 1913, were sold for a price greater than the market value on March 1, 1913, but less than the cost, there was no taxable gain. It reached this conclusion by construction of the statute.

RECENT CASES

AMBASSADORS AND CONSULS — RIGHT OF FOREIGN EMBASSIES TO BE REPRESENTED IN OUR COURTS BY *AMICI CURIAE*. — The libelant brought a suit *in rem* against the *Gleneden*, a steamship leased as a British Admiralty transport. Counsel for the British Embassy intervened as *amici curiae* and raised objection to the jurisdiction of the court, claiming that the vessel was owned by the British government. The suggestion of the *amici curiae* was overruled on the ground that the vessel was privately owned. The master of the *Gleneden* applied for a writ of prohibition to prevent the court from proceeding with the suit. *Held*, that the petition be dismissed. *In re Muir, Master of the Gleneden*, U. S. Sup. Ct., October Term, 1920, No. 18, Original.

One ground of the decision was that the suggestion of the *amici curiae* was improperly received.

A suit *in rem* was brought against the *Pesaro*. The Italian Ambassador submitted a suggestion that the ship was owned by the Italian government and was not subject to the jurisdiction of the court. This suggestion was accompanied by a certificate of the Secretary of State that the Ambassador was the duly accredited diplomatic representative of Italy. The libelants objected.

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[2] 247 U. S. 189 (1918).
[3] 15 Wall. (U. S.) 63 (1872).
[4] 247 U. S. 221 (1918).
[5] 252 U. S. 189, 207 (1920).
[6] U. S. Sup. Ct., October Term, 1920, No. 663.

The court decreed that the arrest of the ship be vacated, and the libelants appealed. *Held*, that the decree be reversed. *The Pesaro*, U. S. Sup. Ct., October Term, 1920, No. 317.

For a discussion of the principles involved in these cases see NOTES, page 773, *supra*.

ANIMALS — DAMAGE TO PERSONS AND CHATTELS BY ANIMALS — INJURY TO PERSON BY COW ON LAND ADJACENT TO HIGHWAY. — The defendant's cow, while being driven along the highway without negligence, escaped from his control, entered land adjoining the highway belonging to the plaintiff's brother, and knocked the plaintiff down. There was no *scienter*. *Held*, that the plaintiff cannot recover. *Street* v. *Craig*, 56 D. L. R. 105.

This case emphasizes the distinction between an injury caused by failure to restrain an animal and one caused by driving animals along the highway. Had the same injury occurred through the escape of the cow from an enclosure, the plaintiff would have recovered. *Troth* v. *Wills*, 8 Pa. Super. Ct. 1. See *Decker* v. *Gammon*, 44 Me. 322. The courts are not agreed on the basis of such a recovery, but the better view is that it is the violation of the duty of restraint of animals, imposed on the owner by law to secure the interest of persons on their own land in security from invasion and injury by wandering animals. See 32 HARV. L. REV. 420. If this duty is violated, it seems immaterial that the person injured did not happen to be owner of the land invaded. But there is no such extraordinary duty on an owner driving his animal along the street. Then the injury is caused by the affirmative conduct, not the failure to restrain, and to this affirmative conduct the law applies the usual standard of due care. *Tillett* v. *Ward*, 10 Q. B. D. 17; *Hartford* v. *Brady*, 114 Mass. 466. The interest of the landowner to be safe from invasion yields to the many interests in the use of public ways, and he takes the risk of any injury resulting from a proper and non-negligent use of the highway. *Brown* v. *Collins*, 53 N. H. 442.

ANIMALS — *SCIENTER* — LIABILITY FOR ATTACK BY MAD DOG KNOWN TO BE VICIOUS BUT NOT KNOWN TO BE MAD. — The defendant owned a dog which he knew to be vicious. Unknown to the defendant the dog became afflicted with rabies and bit the daughter of the plaintiffs, causing her death by hydrophobia. The plaintiffs sue for loss of services. *Held*, that the plaintiffs recover. *Clinkenbeard* v. *Reinert*, 225 S. W. 667 (Mo.).

For a discussion of the principles involved in this case, see NOTES, page 770, *supra*.

APPEAL AND ERROR — DETERMINATION AND DISPOSITION OF CAUSE — JOINT ASSIGNMENT OF ERROR NOT AFFECTING ALL THE APPELLANTS. — A directed verdict for the defendant was error as to one of the several plaintiffs. There was a joint assignment of error. *Held*, that the judgment be affirmed. *Dolbear* v. *Gulf Production Co.*, 268 Fed. 737 (Circ. Ct. App., 5th Circ.).

The common-law rule was that if a joint assignment of error was bad as to any party it was bad as to all. *Levy* v. *South Omaha Savings Bank*, 57 Neb. 312, 77 N. W. 769; *Helms* v. *Cook*, 62 Ind. App. 629, 111 N. E. 632; *Hancock* v. *Hullett*, 203 Ala. 272, 82 So. 522. The rule has sometimes been specifically changed by statute. *Manweiler* v. *Truman*, 125 N. E. 412 (Ind.). See 1917 IND. ACTS, c. 143, § 4. Similarly, a joint demurrer was overruled under common-law practice if the pleading was good as to any party. *Miller* v. *Rapp*, 135 Ind. 614, 34 N. E. 981. See *Boyd* v. *Mutual Fire Ass'n*, 116 Wis. 155, 175, 90 N. W. 1086, 1093. Also a single demurrer to several counts or pleas was overruled if one count or plea was good. *Chambers* v. *Lathrop*, Morris (Ia.), 102; *Farmers & Merchants Insurance Co.* v. *Menz*, 63 Ill. 116. But there was